
SENATE BILL No. 393

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15-2.

Synopsis: Arbitrator selection for state employee complaints. Provides that if: (1) a state employee requests arbitration concerning a decision rendered by the state employee appeals commission; and (2) a party to the arbitration fails to strike a name from the list of arbitrators provided by the commissioner of labor within 15 days after receipt of that list; the commissioner shall strike a name on behalf of that party.

Effective: July 1, 2007.

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January 11, 2007, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 393

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-2-35, AS AMENDED BY P.L.222-2005,
2 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 35. (a) This section does not apply to an employee
4 who has been suspended or terminated by the ethics commission.

5 (b) Any regular employee may file a complaint if the employee's
6 status of employment is involuntarily changed or if the employee
7 deems conditions of employment to be unsatisfactory. However, the
8 complaint procedure shall be initiated as soon as possible after the
9 occurrence of the act or condition complained of and in no event shall
10 be initiated more than thirty (30) calendar days after the employee is
11 notified of a change in the status of employment or after an
12 unsatisfactory condition of employment is created. Failure to initiate
13 the complaint procedure within this time period shall render the
14 complaint procedure unavailable to the employee. The following
15 complaint procedure shall be followed:

16 Step I: The complaint procedure shall be initiated by a discussion of
17 the complaint by the employee and the employee's immediate

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supervisor and, if a mutually satisfactory settlement has not been made within two (2) consecutive working days, the complaint may be referred to Step II.

Step II: The complaint shall be reduced to writing and presented to the intermediate supervisor. If a mutually satisfactory settlement has not been reached within four (4) consecutive working days, such complaint may then be referred to the appointing authority.

Step III: The appointing authority or the appointing authority's designee shall hold a hearing, if necessary, and conduct whatever investigation the appointing authority or the appointing authority's designee considers necessary to render a decision. The appointing authority or the appointing authority's designee must render a decision in writing not later than ten (10) business days from the date of the hearing, if applicable, or close of the investigation, whichever occurs later.

If the appointing authority or the appointing authority's designee does not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or the director's designee shall review the complaint and render a decision not later than fifteen (15) calendar days after the director or the director's designee receives the complaint. If the decision is not agreeable to the employee, an appeal may be submitted by the employee in writing to the commission not later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or the director's designee. After submission of the appeal, the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated without loss of pay. In all other cases the appointing authority shall follow the recommendation of the commission, which may include reinstatement and payment of salary or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the

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employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations, and from this list each party shall strike one (1) name **within fifteen (15) calendar days from receipt of the list. If a party fails to strike within fifteen (15) calendar days, the commissioner of labor shall strike on the party's behalf.** The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

SECTION 2. IC 4-15-2-35.5, AS AMENDED BY P.L.1-2006, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35.5. (a) This section applies only to an employee who has been suspended or terminated by the ethics commission.

(b) An employee who has been suspended or terminated by the ethics commission may request that the ethics commission reconsider its decision by filing a written petition for reconsideration with the ethics commission not later than fifteen (15) days after the date on which the employee was suspended or terminated. The employee must include in the petition for reconsideration a concise statement of the reasons that the employee believes that the termination or suspension was erroneous.

(c) After receipt of the petition for reconsideration, the ethics commission shall set the matter for hearing. At the hearing, the employee is entitled to the due process protections of IC 4-21.5, including the right to:

- (1) be represented by counsel;
- (2) present relevant evidence; and
- (3) cross-examine opposing witnesses.

(d) The ethics commission shall rule on the petition for reconsideration not later than thirty (30) days from the date of the hearing. The ethics commission may:

- (1) affirm its decision to suspend or terminate the employee;
- (2) modify its decision to suspend or terminate the employee by:
 - (A) reducing the term of suspension; or
 - (B) vacating its order for termination and imposing a term of suspension; or
- (3) vacate its order to suspend or terminate the employee.

(e) If the ethics commission vacates its order to suspend or terminate the employee under subsection (d)(3), the ethics commission may order the payment of all or part of the wages lost by the employee

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1 during the period of suspension or termination.

2 (f) Unless the ethics commission orders otherwise, the pendency of
3 a petition for reinstatement does not stay the order for termination or
4 suspension.

5 (g) An employee who has filed a petition for reconsideration may
6 not file a second or subsequent petition for reconsideration.

7 (h) If the ruling by the ethics commission on the employee's petition
8 for reconsideration is not agreeable to the employee, the employee may
9 submit an appeal in writing to the commission not later than fifteen
10 (15) calendar days after the date of the ruling by the ethics commission
11 on the petition for reconsideration. After submission of the appeal, the
12 commission shall, before rendering its decision, grant the appealing
13 employee and the ethics commission a public hearing, with the right to
14 be represented and to present evidence. With respect to all appeals, the
15 commission shall render its decision within thirty (30) days after the
16 date of the hearing on the appeal. If the commission finds that the
17 action against the employee was taken on the basis of politics, religion,
18 sex, age, race, or because of membership in an employee organization,
19 the employee shall be reinstated without loss of pay. In all other cases
20 the ethics commission shall follow the recommendation of the
21 commission, which may include reinstatement and payment of salary
22 or wages lost by the employee, which may be mitigated by any wages
23 the employee earned from other employment during a period when the
24 employee was dismissed or suspended.

25 (i) If the recommendation of the commission under subsection (h)
26 is not agreeable to the employee, not later than fifteen (15) calendar
27 days after receipt of the commission's recommendation, the employee
28 may elect to submit the complaint to arbitration. The cost of arbitration
29 shall be shared equally by the employee and the state of Indiana. The
30 commissioner of labor shall prepare a list of three (3) impartial
31 individuals trained in labor relations, and from this list each party shall
32 strike one (1) name **within fifteen (15) calendar days from receipt of**
33 **the list. If a party fails to strike within fifteen (15) calendar days,**
34 **the commissioner of labor shall strike on the party's behalf.** The
35 remaining arbitrator shall consider the issues that were presented to the
36 commission and shall afford the parties a public hearing with the right
37 to be represented and to present evidence. The arbitrator's findings and
38 recommendations shall be binding on both parties and shall
39 immediately be instituted by the commission.

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